

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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| In the Matter of |) | |
| |) | |
| ITC^DeltaCom |) | IC No. 03-S82699 |
| |) | |
| Complaint Regarding |) | |
| Unauthorized Change of |) | |
| Subscriber's Telecommunications Carrier |) | |

ORDER ON RECONSIDERATION

Adopted: January 29, 2007

Released: January 29, 2007

By the Chief, Consumer & Governmental Affairs Bureau:

1. In this Order, we deny a petition filed by ITC^DeltaCom¹ asking us to reverse a finding that ITC^DeltaCom changed the Complainant's telecommunications service provider in violation of the Commission's rules by failing to obtain proper authorization and verification.² On reconsideration, we affirm that ITC^DeltaCom's actions violated the Commission's carrier change rules.³

I. BACKGROUND

2. In December 1998, the Commission adopted rules prohibiting the practice of "slamming," the submission or execution of an unauthorized change in a subscriber's selection of a provider of telephone exchange service or telephone toll service.⁴ The rules were designed to take the profit out of slamming.⁵ The Commission applied the rules to all wireline carriers,⁶ and modified its

¹ See Petition for Review of ITC^DeltaCom (filed July 27, 2004) (*Petition*) seeking reconsideration of ITC^DeltaCom, 19 FCC Rcd 11962 (2004) (*Division Order*), issued by the Consumer Policy Division (Division), Consumer & Governmental Affairs Bureau (CGB). Although ITC^DeltaCom's *Petition* was styled a "Petition for Review," it is being treated as a Petition for Reconsideration pursuant to 47 U.S.C. § 405 and 47 C.F.R. § 1.106, and we may properly consider the merits of the *Petition* because it was filed within thirty days of release of the *Division Order*. Cf. *Southern Union Gas Company*, 15 FCC Rcd 10995, 10996 (2000) (treating a petition to revoke as a petition for reconsideration); *Burlington Cablevision, Inc.*, 13 FCC Rcd 772 (1998) (treating an application for review as a petition for reconsideration).

² See *Division Order*, 19 FCC Rcd 11962 (2004).

³ See 47 C.F.R. §§ 64.1100 – 64.1190.

⁴ See *id.*; see also 47 U.S.C. § 258(a).

⁵ See *Implementation of the Subscriber Carrier Selection Changes Provisions of the Telecommunications Act of 1996; Policies and Rules Concerning Unauthorized Changes of Consumers' Long Distance Carriers*, CC Docket No. 94-129, Second Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 1508, 1512, para. 4 (1998) (*Section 258 Order*). See also *id.* at 1518-19, para. 13.

⁶ See *id.* at 1560, para. 85. CMRS providers were exempted from the verification requirements. See *Section 258 Order* at 1560-61, para. 85.

existing requirements for the authorization and verification of preferred carrier changes.⁷

3. The rules require that a submitting carrier receive individual subscriber consent before a carrier change may occur.⁸ Specifically, a carrier must: (1) obtain the subscriber's written or electronically signed authorization; (2) obtain confirmation from the subscriber via a toll-free number provided exclusively for the purpose of confirming orders electronically; or (3) utilize an independent third party to verify the subscriber's order.⁹

4. The Commission also adopted liability rules for carriers that engage in slamming.¹⁰ If the subscriber has not already paid charges to the unauthorized carrier, the subscriber is absolved of liability for charges imposed by the unauthorized carrier for service provided during the first 30 days after the unauthorized change.¹¹ Where the subscriber has paid charges to the unauthorized carrier, the unauthorized carrier must pay 150% of those charges to the authorized carrier, and the authorized carrier must refund or credit to the subscriber 50% of all charges paid by the subscriber to the unauthorized carrier.¹²

5. The Commission received a complaint on February 13, 2003, alleging that Complainant's telecommunications service provider had been changed from AT&T Communications (AT&T) to ITC^DeltaCom without Complainant's authorization.¹³ Pursuant to Sections 1.719 and 64.1150 of the Commission's rules,¹⁴ the Division notified ITC^DeltaCom of the complaint.¹⁵ In its response, ITC^DeltaCom submitted a letter of agency (LOA) as proof of the switch.¹⁶ The Division found that the LOA did not contain Complainant's telephone number as required by the Commission's rules,¹⁷ and therefore, that ITC^DeltaCom's actions resulted in an unauthorized change in Complainant's telecommunications service provider.¹⁸ ITC^DeltaCom seeks reconsideration of the *Division Order*.

⁷ See *Section 258 Order*, 14 FCC Rcd at 1549, para. 66.

⁸ See 47 C.F.R. § 64.1120. See also 47 U.S.C. § 258(a) (barring carriers from changing a customer's preferred local or long distance carrier without first complying with one of the Commission's verification procedures).

⁹ See 47 C.F.R. § 64.1120(c). Section 64.1130 details the requirements for letter of agency form and content for written or electronically signed authorizations. 47 C.F.R. § 64.1130.

¹⁰ See 47 C.F.R. §§ 64.1140, 64.1170.

¹¹ See 47 C.F.R. §§ 64.1140, 64.1160 (any charges imposed by the unauthorized carrier on the subscriber for service provided after this 30-day period shall be paid by the subscriber to the authorized carrier at the rates the subscriber was paying to the authorized carrier at the time of the unauthorized change).

¹² See 47 C.F.R. §§ 64.1140, 64.1170.

¹³ Informal Complaint No. IC 03-S82699.

¹⁴ 47 C.F.R. § 1.719 (Commission procedure for informal complaints filed pursuant to Section 258 of the Act); 47 C.F.R. § 64.1150 (procedures for resolution of unauthorized changes in preferred carrier).

¹⁵ Notice of Informal Complaint No. IC 03-S82699 to ITC^DeltaCom from the Deputy Chief, CGB, dated November 12, 2003.

¹⁶ ITC^DeltaCom's Response to Informal Complaint No. IC 03-S82699, received December 18, 2003 (*Response*).

¹⁷ See 47 C.F.R. § 64.1130(a).

¹⁸ See 47 C.F.R. § 64.1150(d).

II. DISCUSSION

6. In the *Petition*, ITC^DeltaCom argues its *Response* demonstrated that it changed Complainant's service from AT&T to ITC^DeltaCom for approximately 70 telephone numbers, including the single telephone number at issue in the complaint, per a written LOA.¹⁹ According to ITC^DeltaCom, due to the volume of telephone numbers being switched, Complainant's company signed two separate LOAs.²⁰ ITC^DeltaCom attached to its *Petition* a copy of these LOAs, each dated January 2, 2003, and executed by the authorized representative of Complainant's company.²¹ ITC^DeltaCom also claims it spoke with Complainant, and that Complainant stated that when he filed his complaint, he was not aware that an authorized representative from Complainant's company had in fact authorized a change in long distance providers.²² ITC^DeltaCom states Complainant filed with the Commission a request to formally withdraw the complaint.²³ This request was made after the *Division Order* was released.²⁴

7. Based on the record before us, we affirm the *Division Order* and deny ITC^DeltaCom's *Petition*. As explained above, the Division received only one LOA with ITC^DeltaCom's response to the complaint, which did not contain Complainant's telephone number. ITC^DeltaCom now submits a second LOA containing the telephone number at issue. In order to introduce new facts on reconsideration, a petitioner must show either that: (1) the petition relies on facts which relate to events which have occurred or circumstances which have changed since the last opportunity to present such matters; or (2) the petition relies on facts unknown to petitioner until after his last opportunity to present such matters which could not, through ordinary diligence, have been learned prior to such opportunity.²⁵ New facts may also be introduced on reconsideration if the Commission determines that consideration of such facts is in the public interest.²⁶ We find that ITC^DeltaCom has not met its burden in this regard. ITC^DeltaCom acknowledges that, based on conversations with Division staff, it appeared Division staff had only one LOA which did not contain the telephone number at issue.²⁷ Consequently, ITC^DeltaCom has not shown that it submitted the LOA with the relevant telephone number with its response to the

¹⁹ See *Petition* at 3. ITC^DeltaCom's *Response* was appended to the *Petition* as Exhibit 1.

²⁰ See *Petition* at 3.

²¹ See *id.* Included as part of Exhibit 1 are two separate pages, each titled, "LETTER OF AGENCY FOR CHANGE IN SERVICE PROVIDER."

²² *Id.* ITC^DeltaCom contends its *Response* informed the Commission that Complainant said he was unaware that the change in service provider was authorized by Complainant company's corporate office when he filed his complaint. *Id.* at 4.

²³ *Id.* ITC^DeltaCom's *Petition* appends a copy of Complainant's letter dated July 21, 2004 as Exhibit 2. ITC^DeltaCom states Complainant's request urges the Commission to rescind the *Division Order*, expresses his desire to continue receiving long distance service from ITC^DeltaCom, and states his company does not wish to have AT&T as its long distance service provider. See *Petition* at 4.

²⁴ See *Petition* at Exhibit 2.

²⁵ See 47 C.F.R. § 1.106(c).

²⁶ See *id.*

²⁷ *Petition* at 3.

complaint.²⁸ While we realize that there may be some circumstances under which it is appropriate for a carrier to be given more than 30 days to respond fully to a slamming complaint (and we would consider all such requests), we do not believe it is appropriate to allow the submission of new facts when a carrier has been given ample time to respond in the first instance, and without any showing of good cause, after an order has been issued against the carrier.²⁹ Accordingly, we do not find good cause to consider the second LOA, and we deny ITC^DeltaCom's request to reverse the decision of the *Division Order*.

III. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, pursuant to Section 258 of the Communications Act of 1934, as amended, 47 U.S.C. § 258, and Sections 0.141, 0.361, 1.106 and 1.719 of the Commission's rules, 47 C.F.R. §§ 0.141, 0.361, 1.106, 1.719, the Petition for Reconsideration filed on July 27, 2004, by ITC^DeltaCom IS DENIED.

9. IT IS FURTHER ORDERED that this Order is effective UPON RELEASE.

FEDERAL COMMUNICATIONS COMMISSION

Catherine W. Seidel, Chief
Consumer & Governmental Affairs Bureau

²⁸ Assuming *arguendo* we accept ITC^DeltaCom's assertions that it did submit an LOA containing the telephone number at issue with the *Response*, we find that the LOA violates section 64.1130(b) of the Commission's rules, which provides, in relevant part, that the LOA shall contain only the authorizing language described in Section 64.1130(e) having the "sole purpose of authorizing a carrier to initiate a preferred carrier change." 47 C.F.R. § 64.1130(a). Our review of the LOA which ITC^DeltaCom submitted with the *Petition* demonstrates that, in addition to language authorizing a carrier change, the LOA contains language relating to a "change freeze." The LOA states in relevant part, "If initialed, at no additional charge to Customer, Customer requests ITC^DeltaCom to place a CHANGE FREEZE on the numbers listed above in an effort to prevent future local/long distance carrier changes made without Customer's written consent." The LOA therefore contains language not related to the "sole purpose" of authorizing a carrier change and violates our carrier change rules. See 47 C.F.R. § 64.1130(b).

²⁹ We conclude that Complainant's request to withdraw the complaint does not alter ITC^DeltaCom's responsibility with respect to violations of the Commission's carrier change rules. In addition to the Commission's substantive requirements regarding verification of orders for telecommunications service (47 C.F.R. § 64.1120, *et seq.*) and letter of agency form and content (47 C.F.R. § 64.1130, *et seq.*), Commission rules contain other requirements to be followed when an unauthorized change in carriers has occurred, whether or not a request for withdrawal of a complaint has been made. For example, absolution procedures where the subscriber has not paid charges (see 47 C.F.R. § 64.1160, *et seq.*) or reimbursement procedures (47 C.F.R. § 64.1170, *et seq.*) may apply. A request to withdraw a complaint does not obviate these requirements. In an analogous case, we stated that the fact that a carrier indicated that it settled with the Complainant does not alter its obligations to follow the Commission's reimbursement procedures. See *Globalcom*, 21 FCC Rcd 11819 (2006).